

JAN 14 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEVEN ALONZO; et al.,

Plaintiffs - Appellants,

v.

COUNTY OF RIVERSIDE; et al.,

Defendants - Appellees.

No. 06-55172

D.C. No. CV-03-01259-JFW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Argued and Submitted November 5, 2007
Pasadena, California

Before: FARRIS and PAEZ, Circuit Judges, and BLOCK,^{**} District Judge.

The Alonzos appeal the denial of their motion for relief from judgment made pursuant to Federal Rule of Civil Procedure 60(b). The notice of appeal filed

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The Honorable Frederic Block, Senior United States District Judge for the Eastern District of New York, sitting by designation.

January 13, 2006 was timely as to the December 19, 2005 order denying the Rule 60(b) motion (refusing to set aside and vacate dismissal and return the case to the civil active list), but untimely as to the October 6, 2005 order dismissing for failure to prosecute. *See* Fed. R. App. P. 4(a)(1)(A); *Whittaker v. Whittaker Corp.*, 639 F.2d 516, 520 (9th Cir. 1981). We review the denial of a Rule 60(b) motion for abuse of discretion. *See Bateman v. United States Postal Serv.*, 231 F.3d 1220, 1223 (9th Cir. 2000).

Our review satisfies us that the district court considered the relevant legal standards set forth in *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380 (1993). *See also Bateman*, 231 F.3d at 1223-1224 (holding that the *Pioneer* factors apply to Rule 60(b)(1) motions). However, we conclude that the district court abused its discretion in applying those factors. The record fails to reflect either bad faith on the part of the Alonzos' counsel or prejudice to the County. *See Pioneer*, 507 U.S. at 395 (listing as relevant factors whether there was "danger of prejudice to the [non-moving party]" and "whether the movant acted in good faith"). While we are sympathetic to the district court's desire to move its docket along, the record suggests that the delay in prosecuting the case was not the direct result of action by either party's counsel. We reverse and remand for the

sole reason that the record fails to show anything other than “excusable neglect” on the part of counsel. *See id.* at 388, 391.

REVERSED AND REMANDED.